

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-cv-249-FL**

MATTHEW BRADLEY,)	
)	
Plaintiff,)	
)	
- against -)	
)	
)	
ANALYTICAL GRAMMAR, INC.)	
)	
)	
Defendant.)	

**PLAINTIFF’S STATEMENT IN RESPONSE TO DEFENDANT’S SEPARATE
STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS IN OPPOSITION
TO PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT [DKT. # 44]**

Pursuant to Rule 56.1(a) of the Local Civil Rules of the United States District Court for the Eastern District of North Carolina, Plaintiff Matthew Bradley (“Bradley” or “Plaintiff”) respectfully submits this statement in response to Defendant Analytical Grammar, Inc. (“Defendant”)’s Statement of Additional Undisputed Material Facts in Opposition to Plaintiff’s Motion for Partial Summary Judgment [Dkt. #44, pp. 19-23 of 23] (“Defendant’s Separate Statement”).

None of the documents referenced in the “supporting evidence” column of Defendant’s Separate Statement were produced or disclosed during the discovery period in this action. Indeed, none of those documents are bate-stamped with the prefix AG, as per all other documents produced. [2d Declaration of Richard Liebowitz (“2d Liebowitz Declr.”, ¶ 4]

Similarly, none of Defendant's Rule 26 initial disclosures or responses to Plaintiff's request for interrogatories disclosed or identified Michael Duffey as a witness in this action. [2d Liebowitz Declr., ¶ 5. Exs. A-C]

Accordingly, because Defendant's trial-by-ambush strategy of using undisclosed documents and a witness for the first time in opposition to Plaintiff's summary judgment is plainly foreclosed by Rule 37(c)(1) of the Federal Rules of Civil Procedure, Plaintiff DENIES each and every one of Paragraphs 1-22 of Defendant's Separate Statement. Plaintiff is substantially prejudiced by the introduction of such novel, undisclosed evidence because it was deprived of the opportunity to take discovery concerning Mr. Duffey's unsubstantiated proclamations.

Dated: August 21, 2020
Valley Stream, New York

Respectfully submitted:

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